

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: George Fry

Title: APPARATUS, AND  
ASSOCIATED METHOD, FOR  
EFFECTUATING A DATA  
SERVICE DESIGNATED BY A  
SERVICE DELIVERY MODE

Appl. No.: 10/767,451

Filing Date: 1/29/2004

Examiner: Taylor, Barry W.

Art Unit: 2617

Confirmation 3939  
Number:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with the New **Pre-Appeal Brief Conference Pilot Program**, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

**REMARKS**

Applicant is appreciative that the Examiner has maintained that claims 23, 33, 34, 36, 37, 43, 52, 53, 55, and 56 of the present application are allowable over the prior art.

However, in the outstanding final Office Action of March 9, 2009, the Examiner maintained the rejection of claims 21, 22, 25, 27, 28, 32, 38-42, 45, 47, 51, and 57-59 of the present application under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,142,895 (Heatley) in view of U.S. Patent No. 6,882,860 (Kim). Applicant traverses the rejection for the reasons set forth below.

With regard to independent claims 21, 32, 38, 41, 51, and 57 of the present application, the Examiner asserted that Heatley teaches all of the required limitations recited therein except for an indication of “service delivery mode” within a [call] request. However, the Examiner asserted that Kim cures this deficiency of Heatley. Applicant respectfully disagrees with the Examiner’s position.

Heatley operates in a manner whereby a calling party calls a called party and the system pulls the dialed number (associated with the called party) so that the user profile of the called party can be checked to determine what “delivery indication”/“delivery mode” is specified by the called party at any particular time. (See, e.g., Col. 2, ll. 1-37). If the “delivery mode” specified in the user profile of the called party indicates that it is “restricted delivery,” an NSS sends a notification to the calling party that the called party is in a restricted delivery mode, and further indicates what types of calls/transmissions may be made to the called party. (See, e.g., Col. 7, ll. 5-59). For example, if the user profile of the called party indicates that it will only receive, e.g., SMS messages, the NSS notifies the calling party that it can only send SMS messages to the called party.

Hence, Heatley does not teach, e.g., the receipt of a “request for said data service”/“data service request.” This is because Heatley does not teach or suggest that the NSS is aware of what type of call the calling party is attempting to make, let alone a data service that is being requested by the calling party. Additionally, Heatley does not teach that “a service delivery mode,” for example, is associated with the data service “that is being requested.” Again, because it is the user profile of the called party that determines what type of service can be used to communicate with the called party, it is impossible that the “service delivery mode” is associated with the data service “that is being requested,” let alone a data service request that already includes an indication of a service delivery mode.

Furthermore, and as is clear from, e.g., Fig. 3 of Heatley, the “delivery mode” 70 that the Examiner has interpreted as allegedly reading on the claimed service delivery mode merely refers to whether or not the delivery mode is “restricted” or not. (See, e.g., Col. 5, ll. 26-38). Completely different fields in the user profile, e.g., fields 72-1, 72-2, or 72-3, which comprise flags that indicate what type of communication (e.g., data service) are used to indicate to the NSS what type(s) of communications are allowed for that called party. For

example, if the calling party wishes to communicate with the called party via SMS, but the called party only wishes to receive, e.g., voicemails, the called party's "request" for SMS is not associated with the "restricted" delivery mode indicated by the called party as an allowed communication. Moreover, the flag in the user profile of the called party indicating that only voice communication is allowed is also not associated with the calling party's SMS "request." Therefore, contrary to the Examiner's assertion at, e.g., page 2 of the outstanding Office Action, Heatley does not teach that the "delivery mode" is associated with the data service that is being requested, nor that an "indication of service delivery mode" is included in a "data service request."

Moreover and in light of the above, Heatley does not teach, for example as required in claims 21 and 41, routing a data service based on the service delivery mode. Again, the "delivery mode" of Heatley merely allows the NSS to determine that the delivery mode is restricted - it has no relationship to the routing of, e.g., SMS or email messages.

Further still and with regard to, e.g., claims 38 and 57, various types of service delivery modes are disclosed. In the Examiner's opinion, Heatley at Col. 9, ll. 30-58 teaches that two or more delivery modes are possible, including SMS messaging and voicemail. Applicant again respectfully disagrees with the Examiner's position. First, Applicant submits that claims 38 and 57 require that a service delivery mode is associated with a "data service." In this instance, the only data service described in Heatley is SMS messaging, as leaving voicemail cannot reasonably be interpreted as a "data" service. Moreover and more importantly, even if SMS messaging and voicemail were in arguendo, interpreted as the claimed service delivery modes, Applicant submits that Heatley then fails to teach the "data service" with which the service delivery modes are associated. Second and alternatively, as would be understood by those of ordinary skill in the art, SMS messaging, voicemail messaging, and the like are the actual "services" rather than a service delivery mode. Hence, following this interpretation, Heatley fails to teach service delivery modes (e.g., foreground and background) associated with SMS messaging, voicemail, etc. "services" that are "requested" by a calling party.

With regard to Kim, Applicant submits that a system and method of retrieving a particular visual or audible "notification" depending on the type of call/communication that is

presently incoming to a called party's terminal is described. (*See, e.g.*, Abstract). That is, if an SMS message is incoming, the called party terminal will look into its memory to pull the appropriate visual or audible indicia to show/play on the terminal to indicate that the incoming communication is an SMS message. (*See, e.g.*, Col. 4, ll. 5-15 and Col. 5, l. 27-Col. 6, l. 51). Thus, Kim merely teaches that a notification/alert is associated with a “service,” not a service delivery mode as required in the present application.

In light of the above, Applicant submits that it would not have been obvious to one of ordinary skill in the art to combine the teachings of Heatley and Kim because as discussed above, Heatley is not concerned with the type of communication that is incoming to the called party. Again and according to Heatley, the NSS must first access the user profile of the called party to determine what type(s) of communications are allowed.

Additionally and even if Heatley could be interpreted/modified to determine incoming communication type, Kim would do nothing to improve the operation of Heatley because even if this determination could be made, it is irrelevant. At best, the combination of Heatley and Kim would result in a method whereby the NSS of Heatley determines the called party number, accesses the appropriate user profile of the called party, and determines that, e.g., only SMS communications can be sent to the called party. If the calling party chooses to comply with the SMS communication restriction indicated by the called party user profile and actually sends an SMS message, Kim would merely allow this SMS message from the calling party to be identified by a particular alert/notification. However, this method of operation still fails to read on the claimed receiving a request for a data service, where the request already indicates a service delivery mode, and ultimately routing the data service based on the service delivery mode.

Moreover, indicating the type of communication that is incoming (as suggested by Kim) when the type of communication that is allowed by the called party is already known to the called party (since the called party restricts the terminal of Heatley to only receive a desired communication type(s)) would be useless or at least redundant. In other words, the called party would not need to distinguish between different types of incoming communications because either only one type of communication, e.g., SMS, is permitted, or at the least, the called party already knows what types of communication it will receive.

In light of the above, Applicant submits that Kim cannot cure the deficiencies of Heatley, and therefore, the alleged combination of Heatley and Kim fail to teach all of the required limitations recited in independent claims 21, 32, 38, 41, 51, and 57 of the present application.

Claims 30-31 and 49-50 were rejected based on the combination of Heatley and Kim further in view of Goto. Claims 24, 26, 29, 44, 46 and 48 were rejected based on the combination of Heatley and Kim further in view of Glitho. Neither Goto nor Glitho cure the deficiency in Heatley and Kim.

Because none of the references cited by the Examiner, either separately or in combination with each other, teach all of the required limitations recited in independent claims 21, 32, 38, 41, 51, and 57 of the present application, Applicant submits that these claims are patentable over this prior art in addition to claims 23, 33, 34, 36, 37, 43, 52, 53, 55, and 56 that have already been deemed patentable. Furthermore, because dependent claims 22-31, 39, 40, 42, 44-50, 58, and 59 are each directly or indirectly dependent upon independent claims 21, 32, 38, 41, 51, and 57, Applicant submits that each of these claims are also allowable for at least the same reasons as discussed above.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

Respectfully submitted,

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